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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC.,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANT'S BRIEF OPPOSING MOTION TO AFFIRM.

GERALD T. WILEY,
J. AUSTIN LATIMER,
Counsel for Appellant.

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Ready Truck Lines, Inc., appellant, now comes and opposes appellees' Motion to Affirm, pursuant to Rule 7, paragraph 3, for the following reason:

The questions on which the decision of the cause depend are substantial.

This is not simply a case wherein the Interstate Commerce Commission was called upon to weigh conflicting evidence as to appellant's claim of "grandfather" rights by virtue of having been in operation on and since the statutory date provided for by the Motor Carrier Act.

This case involves fundamental rights of a motor carrier to a fair hearing by the Commission. And, while it goes without saying that, the Interstate Commerce Commission has, prior to its administration of the Motor Carrier Act, been almost uniformly fair in its proceedings, it is apparent from the handling of appellant's case that the Motor Carrier Act has burdened it with such a volume of work as to impair its previous excellent record.

Appellees' motion is based upon two propositions: (1) Appellant had a full hearing because its petition for rehearing based upon newly discovered evidence did not show that the evidence was not available at the original hearing, that the evidence could not have been procured with diligence, and that the evidence would have affected the issues; and (2) appellant had a fair hearing because he pitted his testimony against that of others, and the Commission is entrusted to determine controverted issues of fact.

With respect to a full hearing, the record positively shows that the newly discovered evidence was not available to appellant, nor could it have been procured with diligence at the original hearing. The record shows that this evidence was in the form of shipping documents in the possession of National Tea Company, one of appellant's shippers; that said documents had been thought by said shipper to have been destroyed a long time prior; that said documents show that appellant transported commodities in the territory on and continuously since the statutory "grandfather" date, as claimed by appellant. The record shows that these representations were made to the Commission when appellant requested the rehearing.

With respect to a fair hearing, appellant does not complain that the Commission simply weighed evidence and found against appellant. As set forth in appellant's Assignment of Errors, the Commission and its hearing examiner in this case acted in such an unfair and arbitrary

manner throughout as to render the questions raised by this appeal of substantial importance not only to appellant but to all motor carriers subject to the Motor Carrier Act.

Involved in this appeal is the question of the competency of all of the evidence offered by protestants and upon which the Commission based its report and order. While appellant realizes that the Commission is not bound by mere technical rules of evidence, protestants were permitted by the hearing examiner to run wild with: (a) testimony in violation of a stipulation, which stipulation appellant consistently abided by and under which it surrendered many valuable operating rights; (b) testimony of the rankest sort of hearsay; (c) testimony regarding rate differences, which had no relation to the issues involved; (d) "cross-examination" of their own witnesses by use of leading and suggestive questions; and other equally offensive conduct that absolutely deprived appellant of a fair hearing upon the facts at issue. This is the record upon which the Commission found against appellant.

Unless this Supreme Court, our court of last resort, accepts the jurisdiction given it by Congress in this cause, and passes upon the methods by which appellant was denied its statutory right to continue the operation of a substantial motor trucking business a milestone in the extension of growing arbitrary actions of administrative bodies will have been passed, and the precedent, that the Commission's unfair conduct does not present a substantial question, will stand as an obstacle confronting every person appearing before administrative bodies.

Appellees' motion to affirm should be denied.

Respectfully submitted,

GERALD T. WILEY,
J. AUSTIN LATIMER,
Counsel for Appellant.